

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
MINUTES
March 10, 2008**

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: Raymond Arroyo
Dan Koch
Joseph Frasco, Vice-Chairman
William Viethier
Eric Oakes
Christopher Owens (Alt #1)
Michael Bieri (Alt. #2)
William Martin, Chairman

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Maser Consulting, PA
Board Engineer

ABSENT: Guy Hartman (excused absence)
Steve Lydon, Burgis Associates
Borough Planner (excused absence)

4. MINUTES - Minutes of 2/4/08 as amended were approved on motion made, seconded and carried.

5. CORRESPONDENCE: As listed on Agenda and read:

(WWZB 3/10/08)

1. Letter dated February 22, 2008 from Community Housing & Planning RE: JP Morgan Chase application;

2. Letter dated February 5, 2008 from Maser RE: Boenigk application;

3. Memorandum dated February 21, 2008 from Burgis RE: Visich application;

4. Letter from Alampi & DeMarrais dated February 25, 2008 RE: Paragon Federal Bank;

5. Letter from Beattie Padovano, LLC dated February 22, 2008 RE: JP Morgan Chase;

6. Memorandum from Community Housing & Planning dated February 26, 2008 RE: JP Morgan Chase;

7. Letter from Sokol, Behot & Fiorenzo dated February 27, 2008 RE: Paragon Federal Bank;

8. Letter dated February 12, 2008 from Maser RE: Petrina application;

9. Letter dated February 13, 2008 from Maser RE: Solowjow application;

10. Letter dated February 13, 2008 from Maser RE: Visich application;

11. Letter dated February 15, 2008 from Beattie Padovano, RE: Rockland Coaches, Inc.;

12. Letter dated February 18, 2008 from David Rutherford, Esq. with attachments RE: Milo, Inc.

13. Memorandum dated February 14, 2008 from Burgis RE: Petrina application;

14. Memorandum dated February 14, 2008 from Burgis RE: Solowjow application;

(WWZB 3/10/08)

15. Information - March 29, 2008 Land Use Symposium;

16. Letter dated January 31, 2008 from Hackensack Riverkeeper;

6. **VOUCHERS:** None

7. **RESOLUTIONS:**

1. **Rockland Coaches, 180 Old Hook Road - Variance -**
Carried to 4/7/08;

8. **PENDING NEW BUSINESS:** None

9. **APPEALS:** None

10. **VARIANCES, SUBDIVISIONS AND/OR SITE PLANS APPEALS, INTERPRETATIONS**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS
The Board Professionals were sworn in

1. **Pathan, 33 High Street - Land Use and Development -**
Mr. Rutherford provided the status. Mr. Martin commented the application was carried for many months. Mr. Pathan appeared and requested an adjournment. He spoke with applicant's attorney on the 4th, and did not hear from him in writing or over the telephone at that time. He told him the application was incomplete and substantially deficient in the escrow account. Mr. Pathan said he would replenish the escrow account next week. Mr. Martin recommended carrying the application one last time to 5/5/08. If they are not prepared with submitting documents in advance and the escrow, it will be dismissed. The documents must be sent 10 days in advance. We have had difficulty corresponding with the applicant in the past. The matter was carried to 5/5/08.

2. **Pavese, 615 Broadway - Use Variance -** Carried to 4/7/08 at request of applicant. Mr. Rutherford advised a letter was received from Mr. Russo, attorney for applicant. Mr. Rutherford advised he must communicate with Mr. Raimondi as to which site plan issues can be waived and which cannot. The matter was carried to 4/7/08 at the request of applicant's attorney. He will advise Mr. Russo to republish and renotice for that date.

(WWZB 3/10/08)

3. JP Morgan Chase - Preliminary and final Site Plan and Variance Application - Scheduled for Special Meeting on 3/31/08;

4. George & Virginia Boenigk, 123 Lafayette Avenue - in ground pool/fence - No appearance by applicants. Mr. Raimondi said they submitted a conforming application to the Construction Code Official. The matter was carried to 4/7/08 to confirm same.

5. Fernandez, 45 Ruckner Road - Concrete Walkway Around Pool - Sergio Fernandez, the applicant, was sworn in. His wife is Kim Fernandez. He provided the newspaper publication to the Planning Board Office. Mr. Rutherford checked for the notice in the file, which he found to be in order. He was looking for the Affidavit of Publication, which he gave to Sylvia. Mr. Rutherford advised any action the Board takes will be subject to receipt of same. Mr. Raimondi stated that Mr. Fernandez was putting a walkway around his pool. There were no drainage issues. The variance was for impervious coverage. There were no questions from the Board and none from the public. A motion for approval was made by Mr. Frasco and seconded by Mr. Koch, subject to applicant complying with the plans and provided the Affidavit of Publication from The Record. There were no further questions, comments or discussions. On roll call vote, all members voted yes. Mr. Bieri was not needed to vote.

6. JNH Ltd. (Black Biscuit, LLC), 271 Westwood Avenue, Block 808, Lot 11 - Interpretation of Use Variance - Dismissed without prejudice;

7. Piggyback Media, LLC, 160 Tillman Avenue, Block 2209, Lot 3 - Letter of withdrawal received; dismissed without prejudice;

8. Park/Brian/GV Investment and Consulting - Proposed Subway - Request to carry received from applicant's attorney, Elaine Berkenwald, Esq. Mr. Rutherford advised he will speak with Ms. Berkenwald, as the matter is on appeal and perhaps would be dismissed without prejudice as well.

9 Paragon Federal Credit Union, Washington Avenue, Block 805, Lots 2 & 3 - Carried to 4/7/08 at request of the applicant;

(WWZB 3/10/08)

10 Lynch, 117 Beech Street - Interpretation/Appeal -
Heard and carried to 4/7/08 - Attorney Kurnos represented the applicant, who was delayed by transportation and had not yet arrived. Mr. Martin asked if this was an appeal or interpretation. Mr. Kurnos stated it was an appeal. The matter was for an appeal of the Zoning Officer's decision. James Strabone, Zoning Officer, was sworn in. Mr. Arroyo asked if there was proper notice. Mr. Rutherford read the notice, which asked for an appeal and interpretation and also recited the variances. However, Mr. Martin stated, they are here for an appeal only, which Mr. Rutherford advised was correct. Mr. Kurnos gave the history of the property.

Rosanne Lynch, the applicant, arrived and was sworn in. Mr. Kurnos referred to the survey. They contend the Survey, A1, undated, was prepared way in advance of the Lynch's purchase of the property and is the one the Zoning Officer relied on in doing his report. If you look at the second Survey, A2, dated 1998, by Hallard, it shows a much different structure. A2 is the accurate survey and A1 is not. There is no second driveway on the undated survey. A2 shows a much different size structure and a wood deck. The pool was removed. The driveway was paved without a permit. There was a stop work order. The contractor then obtained a permit. The wood deck was removed by the Lynch's when they purchased, and replaced with a patio on grade. It is their contention there were no expansions. There was an error in relying on an undated survey, A1. When he made an OPRA request, he was provided the survey in A1 with no notes. When the Zoning Officer provided him with the survey, there were handwritten notes on this. This is a two-family home and is a non-conforming use. Mr. Kurnos said the second driveway was put in prior to his clients purchasing the property. Mr. Martin noted this was not permitted. Mr. Rutherford inquired if this ever came before the Board for a Section 68 Certificate of Zoning Compliance. Mr. Kurnos said the Zoning Officer can issue a Certificate of Non-Conforming Use.

Mr. Rutherford asked Mr. Strabone if there was any question of whether this is a non-conforming two family home as defined in Section 68 of the MLUL. Mr. Strabone said it was. Mr. Martin asked if Mrs. Lynch lived there after she purchased, and she said yes. He asked if she did work and obtained a permit. She said she did not get a permit until she found out she had to, after paving the driveway. The second driveway was already there

(WWZB 3/10/08)

when she purchased. Mr. Martin asked the Zoning Officer to explain. A two-page document was marked B1; A series of five photographs were marked B2.

Mr. Strabone testified what brought this matter to the Zoning Board was the undated survey from the 1990's, prior to the Lynch purchase, and a variance to square off the building from 3/1990. At that time there was no second driveway, but there was a pool with a deck around it. The 4/21/98 survey had a pool, a second driveway. So, Mr. Martin stated, there were improvements made between 1990 and 1998. There were no permits issued per Mr. Strabone. Mrs. Lynch testified she was away and came back to find a paved driveway. Mr. Strabone stated the fence was also moved back. He also described the photos, which were distributed.

Mr. Rutherford said the Board only has jurisdiction over an expansion of a non-conforming use or a bulk variance. Also, a third issue is what should be done with the work that was done prior to the applicant's purchase of the property. And further, there was work done after their purchase. Mr. Strabone said the paving of the main driveway constituted an expansion of the non-conforming use. There is a second driveway. The height of the retaining wall was also reduced. They removed a pool and deck and also installed retaining walls, a patio and fence, but the fence complied.

Mr. Raimondi questioned Mr. Strabone as to the improvements. Mr. Strabone said the retaining wall was not an issue now, because they lowered it. Mr. Martin suggested getting an updated survey to see if the driveway was in fact expanded. The Zoning Officer is contending the driveway was expanded, and this should answer that question. The updated survey will show if the expansion constitutes a variance. Mr. Kurnos disagreed. Mr. Rutherford advised that when work is done that requires a variance, it comes under the purview of the Board. The Board should determine what relief is needed. The first decision to be made is whether any of this work constitutes an expansion of a non-conforming use. The Board has an obligation to determine if there is a bulk variance here. Mr. Kurnos said it is a non-conforming two-family, but it is set up like a mother-daughter. It is not occupied by two families. Mrs. Lynch said her parents and a tenant lived there. The house has now been sold to a new family. Mr. Martin said the problem with expanding the driveway

(WWZB 3/10/08)

is that it is a non-conforming two-family house, not a one-family house.

Mr. Rutherford recited what work the applicant stated was done by them in 2004: Resurfaced a main driveway, installation of retaining walls, removal of deck and installation of patio in its place. The question is whether any of this work constitutes an expansion of a non-conforming use. Then, bulk variances may be needed. Mr. Oakes and Mr. Arroyo had questions. The Board must focus on whether any of the work affects the nature and intensity of the non-conforming use. Exhibit A7 was a letter from George Lucia, previous Construction Code Official, in 1995 stating the property was a two-family.

Mr. Arroyo agreed that more information is needed, i.e., an updated site plan. The Board is not responsible for providing this information. Mr. Rutherford, said we do not have enough information to even determine if there are bulk variances. He did not feel comfortable advising the Board to consider bulk variances. A zoning analysis was not prepared. The Board has the jurisdiction to provide a Zoning Analysis. If someone does work without a permit, that is an enforcement issue, not under the Board's jurisdiction. Mr. Frasco commented he needs more information to make a determination. Mr. Martin said the Board can make a decision on the appeal without receiving any additional documents. Mr. Frasco would want to see a current survey to just make a determination on the appeal.

Mr. Martin therefore requested the applicant if they intended to provide that information, i.e., an updated survey that shows what is on the property now. Mr. Martin said part of the problem was the undated survey. Mr. Kurnos said they did not provide that survey. Anyway, Mr. Martin said the Board members want to compare what is there now with what was there before. Mr. Kurnos said he would provide a survey without prejudice. The matter was carried to 4/7/08. If the survey is not ready, they will be carried again. Mr. Strabone would scale it before the meeting.

The Board took a recess from 10:00-10:10 pm.

11. Phil Petrina, 118 3^d Avenue - Proposed Sunroom addition - Carried to 4/7/08 at request of the applicant;

(WWZB 3/10/08)

12. Visich, 8 Princeton Place - Install deck & convert garage to living space - Mr. Rutherford reviewed the file found the publication documents to be in order. Robert Visich, the applicant, was sworn in, and stated his application was to convert part of a two-car garage to a one-car garage and the addition of a mud room and bathroom. Also, a new deck and stairway at the rear of the dwelling is proposed. They are renovating the kitchen. Mr. Raimondi submitted his report dated 2/13/08. Mr. Lydon submitted his report dated 2/21/08. The variances were for side yard, impervious coverage and a waiver of the submission of a new survey. The survey submitted was prepared by Harold D. Carnegie on March 30, 1993. A series of 12 photos was marked A1 and described by applicant, giving details of the addition. The Board reviewed the architectural plans by Linda Del Nobile Menze, AIA, dated 2/6/08. Mr. Martin noted the three bedrooms requires a one-car garage, which is provided. Mr. Arroyo commented it is a significant, aesthetic improvement and made a motion to approve, with second by Mr. Frasco. On roll call vote, all members voted yes. Mr. Martin commented normally garage space should not be converted to living space, but here it is reallocating this space in a productive manner, and he voted yes.

13. Solowjow, 161 Kinderkamack Road - Proposed dormer - Vincent Cioffi, licensed architect, was sworn in, qualified and accepted. Mrs. Solowjow was also sworn in. Mr. Cioffi prepared Architectural Plans dated 12/13/07, revised to 3/3/08. The house is a typical Cape Cod, and they are adding a dormer to create more living space. The upstairs would become a master bedroom suite. There are currently two-bedrooms on the first floor and one in the bathroom, for a total of four when done. It has a one-car garage, but a very long driveway that can accommodate four cars. They are requiring a side yard variance for their dormer. It was determined there is also a parking variance for the fourth bedroom.

As such, Mr. Frasco inquired about the notice, and Mr. Rutherford advised there was a notice issue. He further noted that Mr. Lydon marked the application incomplete in his memo of 2/14/08. It is unfortunate, but the Board's decision could be set aside if they proceeded. Mr. Martin stated they should not continue without proper notice. Mr. Cioffi asked, in general, given the nature of the project and neighborhood, with most properties having non-conforming frontage and this project not

(WWZB 3/10/08)

unusual, but he has never requested this type of variance and was looking for an opinion. Mr. Martin said the Zoning Board doesn't do that. They need to have the notice fixed and come back. Then we can continue to discuss the questions at that time. Everything is in order for the Board to make a decision except the notice. The matter was carried to the 4/7/08 meeting; applicant to renotice and republish.

12. DISCUSSIONS: Annual Report for next meeting;

Procedural Rules - Mr. Rutherford distributed a new updated set of Procedural Rules which would be reviewed by the Board for the next meeting. Mr. Frasco recommended adding docket numbers to the applications. Mr. Arroyo suggested alternate members be permitted to elect professionals. Mr. Martin noted the alternates can vote only when there is not a full complement of members. Mr. Rutherford advised he would review the Professional Rules again and give special attention to the areas raised.

Publication of the Annual Meetings Notice - Mr. Rutherford advised why the 3/3/08 meeting was canceled and rescheduled for 3/10/08, and that he published said Notice in the Ridgewood News, which was added as an official newspaper of the Borough. Lastly, Mr. Frasco reported on the recent meeting of the Parking Authority.

Annual Municipal Land Use Symposium- March 29, 2008 - Mr. Martin urged all members to attend and they would be registered. Mr. Vietheer would not be attending.

13. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:15 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Planning Board Secretary